

# CALIFORNIA ENVIRONMENTAL QUALITY ACT

## OVERVIEW

Prompted by the passage of NEPA in 1969, CEQA was enacted in 1970 as California's counterpart to NEPA. CEQA is a statute that requires State and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. The objectives of CEQA are to:

- disclose to decision makers and the public the significant environmental effects of proposed activities;
- identify ways to avoid or reduce environmental damage;
- prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures;
- disclose to the public reasons for agency approval of projects with significant environmental effects;
- foster interagency coordination in the review of projects; and
- enhance public participation in the planning process.

Depending on the potential impacts of a proposed project, the environmental information is presented in one of three CEQA documents: a notice of exemption (optional), an initial study supporting either a negative declaration or mitigated negative declaration, or an environmental impact report (EIR).

## ADMINISTRATION AND OVERSIGHT

Two State agencies, the [Governor's Office of Planning and Research \(OPR\)](#) and the [Resources Agency](#), are responsible for CEQA administration. OPR is responsible for:

- reviewing and recommending changes to the CEQA Guidelines,
- recommending categorical exemptions,
- assisting in identifying responsible agencies,
- ensuring that responsible agencies respond to notices of preparation (NOPs),
- operating the State Clearinghouse (SCH),
- resolving lead agency disputes,
- posting notices of completion and determination,
- publishing the SCH newsletter,
- collecting California Department of Fish and Game (DFG) review fees,
- providing education and training on CEQA, and
- maintaining a database to assist agencies in CEQA implementation.

The Resources Agency is responsible for:

- adopting the CEQA Guidelines,
- publishing the EIR Monitor (although it has not been published in several years), and
- certifying State agency regulatory programs.

## **WHO NEEDS TO COMPLY?**

CEQA requirements apply to certain activities of State and local public agencies. A public agency must comply with CEQA when it undertakes an activity defined by CEQA as a “project”. A project is an activity undertaken by a public agency or an activity undertaken by a private entity that:

- must receive some discretionary approval from a government agency (meaning that the agency has the authority to deny the requested permit or approval), and
- may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment.

Most proposals for physical development in California are subject to CEQA provisions, as are many governmental decisions that do not immediately result in physical development (such as adoption of a general or community plan). Every development project that requires a discretionary State or local governmental approval will require at least some environmental review under CEQA, unless an exemption applies.

Projects undertaken solely by a federal agency with no State or local agency involvement need not comply with CEQA. However, it is expected that nearly all CALFED implementation actions will not be solely undertaken by a federal agency and will be considered projects under CEQA’s definition, and will be subject to CEQA compliance because of State or local permitting requirements, funding, or other involvement.

## **HOW LONG DOES THE APPROVAL PROCESS TAKE?**

The CEQA process may take 5 months or longer for projects that require an initial study supporting a negative declaration. For projects that require an EIR, the process may take 12 months or longer.

## **WHAT DOES THE CEQA PROCESS ENTAIL?**

CEQA requires that each State and local agency adopt implementation procedures that are consistent with CEQA and the CEQA Guidelines. However, an agency may adopt the CEQA Guidelines by reference and add specific provisions tailored to the agency’s operations. In practice, most State and local agencies mainly incorporate the Guidelines by reference as their procedures. The following is an overview of the steps involved in CEQA compliance.

**LEAD, RESPONSIBLE, AND TRUSTEE AGENCIES.** First, the lead, responsible, and trustee agencies must be determined. A lead agency is the State or local government agency with primary responsibility for carrying out or approving a project and therefore the primary responsibility for preparing CEQA documents. A lead agency is responsible for deciding whether a negative declaration or an EIR will be required.

A responsible agency is an agency other than the lead agency that also has a legal responsibility for carrying out or approving a project. A responsible agency must actively participate in the lead agency's CEQA process, review its CEQA document, and use that document when making a decision on the project.

Trustee agencies have jurisdiction over certain resources held in trust for the people of California. As designated by the CEQA Guidelines, only four agencies are designated as trustee agencies:

- DFG (with regard to fish and wildlife, rare and endangered native plants, game refuges, and ecological reserves),
- the State Lands Commission (with regard to State-owned “sovereign” lands, such as the beds of navigable waters),
- the California Department of Parks and Recreation (with regard to State park systems), and
- the University of California (with regard to the 33 sites within the Natural Land and Water Reserves System protected for scientific study; see <http://nrs.ucop.edu>).

Trustee agencies are generally required to be notified of CEQA documents relevant to their jurisdiction, whether or not these agencies have actual permitting authority or approval power over aspects of the underlying project.

**DETERMINING THE TYPE OF CEQA COMPLIANCE REQUIRED.** Generally, there are three phases for implementation of CEQA. During the first phase, the lead agency must conduct a preliminary review to determine whether the project is subject to CEQA. If the action is not exempted, the lead agency prepares an initial study during the next phase to determine whether the project may have a significant environmental effect.

During the third phase of the CEQA process, the lead agency prepares either an EIR or a negative declaration. An EIR is prepared if the agency determines that the project may have a significant environmental effect; a negative declaration is prepared if the agency determines that no significant effects will occur. The CEQA compliance document may be prepared by lead agency staff members, another public or private entity, the project applicant, or the project applicant's consultant. The lead agency, however, is ultimately responsible for the scope, contents, and legal adequacy of the document. [Figure 2](#) presents an overview of the three phases of CEQA. The following discussions provide additional detail.

## EXEMPTIONS

**STATUTORY EXEMPTIONS.** The California legislature has the authority to exempt activities from the jurisdiction of CEQA. The legislature has established a variety of statutory exemptions (see [Appendix A](#)). A project that is statutorily exempt is entitled to a blanket exemption from all of CEQA's procedures and policies, even if it has the potential to significantly affect the environment.

**CATEGORICAL EXEMPTIONS.** CEQA directs the Resources Agency to designate classes of projects that should be exempt from CEQA review. A categorical exemption is an exemption from CEQA for a class of projects that the Secretary for Resources determines generally will not have a significant effect on the environment. The Resources Agency has established 32 classes of categorical exemptions (see Appendix A). Unlike statutory exemptions, categorical exemptions are not absolute. A categorical exemption does not apply if:

- unusual circumstances create a reasonable possibility that the activity may have a significant environmental impact or considerable, and therefore significant, cumulative effects; or
- the project would:
  - occur in certain specified sensitive environments,
  - affect scenic resources within official State scenic highways,
  - be located on a hazardous waste site listed by the California Environmental Protection Agency, or
  - cause substantial adverse changes in the significance of a historical resource.

**NOTICE OF EXEMPTION.** When a public agency decides that a project is either statutorily or categorically exempt from CEQA and approves the project or determines to carry it out, the agency may file a notice of exemption, although it is not required to do so. If a notice of exemption is filed, it should be filed with the county clerk or OPR, depending on the public agency filing the notice. If the notice of exemption is filed and posted, a 35-day statute of limitations will commence from the date of project approval; if the notice is not filed, a 180-day statute of limitations will apply.

**INITIAL STUDY.** If an activity is subject to CEQA and no statutory or categorical exemptions apply, a lead agency generally prepares an initial study. An initial study is a preliminary analysis prepared by a lead agency, in consultation with other relevant agencies, to determine whether an EIR or a negative declaration is needed. (The lead agency may forgo preparing an initial study if it determines at the outset of its CEQA review that the proposed project does have the potential to significantly affect the environment and preparation of an EIR will be required.)

If an initial study concludes that the project, without mitigation, may have a significant effect on the environment, an EIR should be prepared. However, if the initial study concludes that the project **does not** have a significant effect on the environment, the lead agency may prepare a negative declaration. A mitigated negative declaration may be prepared if the lead agency determines that the effects of the project, **with mitigation**, would not have a significant effect on the environment.

In preparing an initial study, the lead agency may rely on expert opinion supported by facts, technical studies, or other substantial evidence to document its conclusions. An initial study, however, is not intended to include the level of detail typically found in EIRs.

If, after preparing the initial study, the lead agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, it must:

- prepare an EIR,
- use a previously prepared EIR that adequately analyzes the project at hand, or
- use one of CEQA's allowable tiering methods to determine which of the project's effects have already been adequately examined in an earlier EIR.

The lead agency must take action whether the overall effect of the project is adverse or beneficial.

**NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.** If a proposed project has no potential for significant environmental effects, the CEQA lead agency may prepare a negative declaration. A negative declaration is a written statement, accompanied by an initial study, that briefly explains why the proposed project would not have substantial environmental effects. Preparation and review of a negative declaration are similar to, but more abbreviated than, preparation and review of an EIR. If, after preparing an initial study, the lead agency determines that the proposed project would have potentially significant environmental impacts, the lead agency may avoid preparing an EIR and may prepare a mitigated negative declaration if it develops mitigation measures to clearly mitigate significant impacts and the project proponent agrees to those measures before public review begins.

The lead agency must publish a notice of a proposed negative declaration or mitigated negative declaration. The notice must specify the review period, identify any public meetings or hearings on the project, briefly describe the project, and state where the proposed negative declaration or mitigated negative declaration and all reference documents are available for review. A copy of the notice and the proposed negative declaration or mitigated negative declaration must be mailed to responsible and trustee agencies and agencies with jurisdiction by law and to all parties previously requesting notice. The notice must be posted in the county clerk's office for 30 days. The clerk must post the notice within 24 hours of receipt.

The minimum public review period for a negative declaration or mitigated negative declaration is 20 days. When a negative declaration or mitigated negative declaration is sent to the SCH for review, the public review period must be 30 days unless the SCH approves a shorter period (not less than 20 days).

The lead agency must consider the negative declaration or mitigated negative declaration, together with any comments received, before approving the project. It must also notify any commenting agencies of the date of the public hearing on the project for which a negative declaration or mitigated negative declaration is prepared. The lead agency must adopt a mitigation and monitoring program at the time of the mitigated negative declaration's adoption. A notice of determination (NOD) for approval of a project based on a negative declaration or mitigated negative declaration must be filed with OPR (for State lead or responsible agencies) or the county clerk (for local agencies) within 5 working days after approval of a project for which a negative declaration or mitigated negative declaration has been prepared. The NOD must be posted by the county clerk within 24 hours of receipt.

**ENVIRONMENTAL IMPACT REPORT.** If the lead agency decides that an activity is a project, is not exempt from CEQA, and potentially causes significant effects on the environment that could not be addressed by a mitigated negative declaration, an EIR must be prepared. A lead agency should select the appropriate type of EIR based on the particular decision-making process and project. The following is a list of different types of EIRs:

- tiered EIR;
- project EIR;
- program EIR;
- general plan EIR;
- staged EIR;
- master EIR;
- focused EIR; and
- supplemental EIR.

**NOTICE OF PREPARATION.** Immediately after it decides that an EIR is required, the lead agency must send an NOP, which solicits participation in determining the scope of the EIR, to:

- responsible agencies,
- trustee agencies,
- involved federal agencies,
- the SCH (if a State agency is a responsible agency for the proposed action or if a trustee agency is involved), and
- parties that previously requested notice in writing.

The NOP must be posted in the county clerk's office for 30 days. The county clerk must post the notice within 24 hours of receipt.

**SCOPING MEETINGS.** CEQA does not require formal scoping meetings when a lead agency has decided to prepare an EIR. At the lead agency's discretion, however, scoping meetings may be held with responsible and trustee agencies, other interested agencies, and the public to obtain information about the scope and content of an EIR. Although the lead agency is required to allow 30 days from issuance of the NOP to accept comments regarding the scope of the EIR, it may start collecting the preliminary information and preparing the impact analysis for the EIR immediately after it decides to prepare an EIR. The scoping process assists the lead agency in determining the basic substantive content of the EIR. Through scoping, the lead agency should have identified the range of actions, alternatives, environmental effects, and mitigation measures to be analyzed in depth.

**DRAFT EIR.** Although the lead agency is required to allow for 30 days from issuance of the NOP to accept comments regarding the scope of the EIR, it may start collecting the preliminary information and preparing the impact analysis for the EIR immediately after it decides to prepare an EIR. The scoping process will help the lead agency to determine the basic substantive content of the EIR. Through scoping, the lead agency will identify the range of actions, alternatives, environmental effects, and mitigation measures to be analyzed in depth.

**NOTICE OF AVAILABILITY, NOTICE OF COMPLETION, AND PUBLIC REVIEW.** Once the draft EIR is prepared, the lead agency must distribute the document for review and comment. CEQA requires that the lead agency issue a public notice announcing that the draft EIR is available for review; the notice must be issued to the county clerk, all responsible and trustee agencies, and any person or organization that requests or previously requested a copy. The public notice must either be published in a newspaper of general circulation, posted on and off the project site, or directly mailed to owners and occupants of contiguous property. It must also be posted in the county clerk's office for 30 days. The clerk must post the notice within 24 hours of receiving it.

At the same time the lead agency provides public notice of the availability of a draft EIR, the lead agency must file a notice of completion with the SCH.

The minimum public review period for a draft EIR is 30 days. When a draft EIR is sent to the SCH for review, the public review period must be 45 days unless the SCH approves a shorter period (of not less than 30 days).

CEQA does not require a public hearing on the draft EIR, although in practice most agencies conduct such hearings. This type of hearing is typically held so that the lead agency can receive comments on the draft EIR; it is not a formal evidentiary hearing.

**FINAL EIR.** Before approving the project, the lead agency must prepare a final EIR that responds to all environmental comments received on the draft EIR and must certify the final EIR. The responses to comments on a draft EIR must include good-faith, well-reasoned

responses to all comments received on the draft EIR. The lead agency must circulate its proposed responses to commenting agencies at least 10 days before issuing the final EIR.

If “significant new information” is added to the EIR after the public comment period on the draft EIR closes but before the final EIR is certified, the lead agency must provide a second public review period and recirculate the draft EIR for comments. Recirculation of an EIR is subject to the same public notice and consultation requirements that applied to the original draft EIR. Recirculation of a draft EIR is not required where the new information merely clarifies or makes minor modifications to an adequate EIR.

**CERTIFYING THE FINAL EIR, ISSUING FINDINGS AND A STATEMENT OF OVERRIDING CONSIDERATIONS, AND FILING A NOTICE OF DETERMINATION.** Before it approves the project, the lead agency must certify that the final EIR was prepared in compliance with CEQA and that it was presented to the lead agency’s decision-making body, which reviewed and considered the final EIR before approving the project. In addition, the lead agency must certify that the EIR reflects the independent judgment of the lead agency. At this time the lead agency must also adopt a mitigation monitoring and reporting program.

To support its decision on the project, the lead agency must prepare written findings of fact for each significant impact identified in the EIR. A finding of fact is a written statement that explains how the lead agency dealt with each significant impact and alternative in the EIR. For each significant impact, the agency must make one of the following findings:

- the project has been changed (e.g., by adoption of mitigation measures) to avoid or substantially lessen the magnitude of the impact;
- changes to the project (e.g., mitigation) are within another agency’s jurisdiction; or
- specific economic, social, legal, technical, or other considerations make the proposed mitigation measure or alternative infeasible.

CEQA authorizes lead agencies to approve a project with significant effects if there is no feasible way to lessen or avoid the significant effects and the project’s benefits outweigh these effects. However, when approving a project with unavoidable significant environmental effects, the lead agency must prepare a statement of overriding considerations in which it explains why the agency is willing to accept each significant effect. The statement sets forth the specific overriding social, economic, legal, technical, or other beneficial project aspects supporting the agency’s decision and must be based on substantial evidence in the final EIR or elsewhere in the record.

A lead agency must file a NOD after it decides to approve a project for which an EIR is prepared. No NOD is required if the agency decides to disapprove the project. The NOD must be filed with the county clerk within 5 days of project approval. If State discretionary approval is also involved, the NOD must also be filed with the OPR. In addition, the notice must also be sent to anyone who previously requested notice. The NOD must be posted for 30 days.



**TIERED DOCUMENTS.** Agencies are encouraged to tier environmental documents to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review. Whenever a broad EIR has been prepared and an EIR is subsequently prepared on an action included within the program, the subsequent EIR need only summarize the issues discussed in the broader EIR. The tiered EIR should incorporate discussions from the broader statement by reference and should concentrate on the issues specific to the subsequent action.

The CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR) is a broad EIR from which subsequent CEQA documents can be tiered. [Volume 1, Chapter 3](#), provides guidance on tiering from the PEIS/EIR.

## **WHAT INFORMATION DOES THE APPLICANT NEED TO PROVIDE?**

**NOTICE OF EXEMPTION.** If a project is categorically exempt and a notice of exemption is filed, the notice should include:

- a brief description of the project,
- a finding that the project is exempt,
- citations to the applicable exemption in the law or CEQA Guidelines, and
- a brief statement of reasons that support the finding of exemption.

**INITIAL STUDY.** CEQA requires that an initial study include:

- a description of the project and environmental setting,
- an analysis of potential environmental impacts,
- mitigation measures for any significant effects,
- a description of the proposed project's consistency with plans and policies, and
- a list of the names of the preparers of the initial study.

When describing potential environmental effects in an initial study, the lead agency may use a checklist, matrix, or other form, as long as the entries are briefly explained to indicate that evidence exists to support the entries. The brief explanation may be provided through either a narrative or a reference to another information source such as attached maps, photographs, or earlier EIRs or negative declarations.

**NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.** A negative declaration must include:

- a description of the project and project location;
- the identity of the project proponent;
- a proposed finding of no significant effect;

- for mitigated negative declarations, all mitigation measures that have become part of the specific project; and
- a mitigation and monitoring program for those mitigation measures adopted or made a condition of project approval.

A copy of the initial study that supports the finding must be attached to the negative declaration.

## **ENVIRONMENTAL IMPACT REPORT**

**NOTICE OF PREPARATION.** The required contents of an NOP are:

- a brief description of the proposed project;
- a description of the proposed project's location;
- the date, time, and place of the public hearing (if the lead agency decides to hold one);
- an address where documents or files relating to the proposed project are available for review;
- an address where written comments on the scope of the EIR may be sent; and
- the deadline for submitting comments.

**DRAFT EIR.** The required contents of a draft EIR are:

- table of contents or index;
- summary of discussion contained in the draft EIR (executive summary);
- project description;
- environmental setting;
- presentation of the significant environmental effects of the project including:
  - direct,
  - indirect,
  - short-term,
  - long-term,
  - cumulative, and
  - unavoidable impacts;

- areas of known controversy;
- alternatives to the proposed project, including the no-project alternative, and identification of the environmentally superior alternative;
- mitigation measures for the significant environmental effects;
- growth-inducing impacts; and
- significant irreversible changes expected to result from the proposed project.

**FINAL EIR.** The required contents of a final EIR are:

- the draft EIR or a revision of the draft EIR,
- copies or a summary of comments and recommendations received during public review of the draft EIR,
- a list of persons and entities commenting on the draft EIR, and
- lead agency responses to comments.

**FINDINGS OF FACT.** The findings of fact must include:

- a conclusion regarding each significant impact (see “Certifying the Final EIR, Issuing Findings and a Statement of Overriding Considerations, and Filing a Notice of Determination” above),
- substantial evidence supporting the conclusion, and
- an explanation of how the substantial evidence supports the conclusion.

**STATEMENT OF OVERRIDING CONSIDERATIONS.** The lead agency must prepare a statement of overriding considerations if it is approving a project with unavoidable significant effects. The statement of overriding considerations must set forth the specific overriding social, economic, legal, technical, or other beneficial project aspects supporting the agency’s decision and must be based on substantial evidence in the final EIR or elsewhere in the record.

**MITIGATION MONITORING AND REPORTING PLAN.** The lead agency must prepare a mitigation monitoring and reporting plan for mitigation measures adopted or made condition of project approval.

**NOTICE OF DETERMINATION.** The NOD must:

- include the project name, description, and location, and the date of project approval;

- summarize the project’s significant impacts;
- state whether mitigation measures were adopted as conditions of approval, findings were prepared, and a statement of overriding considerations was adopted;
- state that the final EIR is available for public review; and
- disclose the location where the final EIR and record of project approval is available for review.

## **WHAT IS THE FEE?**

CEQA allows lead agencies collect fees from project applicants for CEQA implementation. Each lead agency’s fee for CEQA compliance will depend on the complexity of the project, the controversy that surrounds the project, the resources affected, and the type of document necessary to achieve CEQA compliance.

## **DOES THIS PROCESS TRIGGER THE NEED FOR COMPLIANCE WITH OTHER REGULATIONS?**

CEQA compliance is often a requirement triggered by other permits; however, CEQA in itself does not trigger the need for compliance with other regulations.

## **WHAT ARE THE OPPORTUNITIES FOR FACILITATING COMPLIANCE WITH THIS PROCESS?**

The following are recommended steps to simplify and streamline the CEQA process for CALFED actions:

- **Start early.** EIR preparation should begin as early as possible in the planning process so that project design will reflect environmental considerations, but late enough to provide meaningful information for evaluation of environmental effects.
- **Conduct a scoping meeting.** Although formal scoping meetings are not required by CEQA, when conducted with responsible and trustee agencies they may be a useful opportunity for obtaining information about the scope and content of an EIR. As with NEPA, these meetings should be held early enough to gain input before the irretrievable commitment of resources, but late enough to allow the public to react to a definite proposal.
- **Tier from the CALFED PEIS/EIR.** The initial study or EIR should incorporate by reference the relevant information contained in the PEIS/EIR, in other programmatic documentation, and in other CEQA documents (such as information contained in an initial study or EIR prepared for other proposed actions). “Guidance for Tiering from the CALFED Final Programmatic EIS/EIR” in [Volume 1, Chapter 3](#), provides specific guidance on tiering from the PEIS/EIR. Use of this guide is strongly recommended for projects that receive funding from CALFED.

- **Ensure that EIR discussions include any information needed to prepare CEQA findings and a statement of overriding considerations.** If an EIR is being prepared for CEQA compliance, the lead agency, when making a decision on the project, will need to prepare findings of fact for each significant impact identified, and will need to prepare a statement of overriding considerations for any impacts found to be significant and unavoidable (see “Certifying the Final EIR, Issuing Findings and a Statement of Overriding Considerations, and Filing a Notice of Determination” above). Conclusions about impact significance and mitigation requirements should be presented in an EIR in a clear and consistent manner, and the EIR should clarify which other agencies would have jurisdiction in enforcing mitigation requirements. Presenting this information clearly in the EIR facilitates preparation of the findings and statement of overriding considerations because the information can be drawn directly from the EIR.

## COORDINATING COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Federal, State, and local agencies are encouraged to prepare a joint EIS/EIR or FONSI/negative declaration when appropriate. NEPA and CEQA establish essentially similar processes (see [Figure 3](#)). In practice, there are several recommendations that may facilitate interaction between federal lead agencies and State and local lead agencies when joint NEPA/CEQA documents are prepared:

- **Clearly determine the lead agencies’ roles.** A written memorandum of understanding (MOU) between the two lead agencies should spell out the roles and responsibilities of each agency, expected schedule, other expectations regarding the preparation of the environmental document (including assumptions regarding impact analysis), and dispute resolution procedures.
- **Use the most stringent environmental requirements.** Because NEPA and CEQA are somewhat different with regard to procedural and content requirement (see [Figure 4](#)), the agencies should agree at the outset to apply whichever requirements are more stringent.
- **Determine the content of the EIS/EIR.** The scope and content of the EIS/EIR, and the respective responsibilities for reviewing interim drafts, should be spelled out clearly.

Additional information on coordinating NEPA and CEQA compliance can be found in [Volume 1, Chapter 3](#), under “Guidance for Tiering from the CALFED Final Programmatic EIS/EIR”.

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